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IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF ARIZONA

In re ARETE HOLDINGS, LLC, Debtor.	Chapter 11 Chapter 11 Case No. 2:11-bk-02009-RTB (Joint Administration Pending) Case No. 2:11-bk-02010; Case No. 2:11-bk-02011; Case No. 2:11-bk-02012; and Case No. 2:11-bk-02020
This filing applies to: ■ All Debtors ☐ Arete Holdings, LLC ☐ Arete NW, LLC ☐ Arete Sleep Therapy NW, LLC ☐ Arete Sleep, LLC ☐ Arete Sleep Therapy, LLC	**DECLARATION OF DANIEL DEMPSEY IN SUPPORT OF DEBTORS' CHAPTER 11 PETITIONS AND FIRST DAY PLEADINGS** **Hearing Date:** **None** **Hearing Time:** **Location:** **Courtroom #703** **230 N First Ave** **Phoenix AZ 85003**

I, Daniel Dempsey, first being duly sworn, state as follows:

1. I am the Chief Restructuring Officer of Areté Holdings, LLC, Areté NW, LLC, Areté Sleep, LLC, Areté Sleep Therapy, LLC, and Areté Sleep Therapy NW, LLC (collectively, the

"Debtors"), each of which is a limited liability company organized under the laws of the State of Delaware.

2. I am authorized to submit this declaration (the "Declaration") on behalf of the Debtors. As a result of my tenure with the Debtors, my review of the relevant documents, and my discussions with other members of the Debtors' management team, I am familiar with the Debtors' day-to-day operations, business affairs, and books and records. Except as otherwise noted, I have personal knowledge of the matters set forth herein and, if called as a witness, could testify competently thereto.

3. To enable the Debtors to minimize the adverse effects of these Chapter 11 Cases (as defined below) on their business, the Debtors intend to request various types of relief in the "first day" applications and motions (collectively, the "First Day Motions"). I submit this Declaration in support of the Debtors' First Day Motions.[1]

4. Except as otherwise stated, all facts set forth in this Declaration are based on my personal knowledge, my discussions with other members of the Debtors' senior management, managers and members, my review of relevant documents, or my opinion, based on my experience and knowledge of the Debtors' operations and financial conditions.

5. Part I of this Declaration describes the Debtors' businesses and the circumstances surrounding the commencement of the above-captioned chapter 11 cases (collectively, the "Chapter 11 Cases"). Part II of this Declaration sets forth the relevant facts in support of the First Day Motions filed concurrently herewith.

I. BACKGROUND

6. Since 2002, the Debtors have been a leading provider of integrated, high quality sleep medicine and total patient care services. Headquartered at 6263 N. Scottsdale Road, Suite 395, Scottsdale, Arizona, the Debtors operate nineteen sleep diagnostic clinics across Arizona, Oregon, Texas and Washington which generate annual gross revenues of approximately $18,000,000. Of these revenues, approximately: (i) 15% is attributable to federal Medicare and Medicaid reimbursements administered by the Centers for Medicare and Medicaid Services ("CMS"); (ii) 25% is attributable to

[1] Unless otherwise defined herein, capitalized terms used herein shall have the same meanings ascribed to them in the relevant First Day Motion.

state-managed Medicaid reimbursements, and (iii) 60% is attributable to reimbursements from private insurance companies and payments received directly from patients.

7. As of the Petition Date, the Debtors employed approximately 140 medical and non-medical professionals, and engaged the services of approximately 32 independent contractors, including eight medical directors and twenty-five reading physicians.

8. The Debtors specialize within the sleep disorder subset of the health care industry, and focus their business primarily on the provision of diagnostic procedures aimed at detecting sleep breathing disorders, the most common of which is obstructive sleep apnea. In addition to these diagnostic capabilities, the Debtors also offer therapy and treatment services for patients' sleep breathing disorders once diagnosed, including the provision of durable medical equipment such as continuous positive airway pressure devices ("CPAPs").

9. In 2002, True North Partners, LLC ("True North") furnished the equity necessary to acquire the assets used to commence the Debtors' business operations.[2] The Debtors were focused on an aggressive growth strategy with the goal of achieving rapid expansion and becoming a leading company providing sleep services.

10. The Debtors made large commitments to building infrastructure and growing the business through organic growth and acquisitions. In 2007, after five years of losses and more limited growth opportunities the strategy changed to: (i) eliminate the losses and needs for additional investment; (ii) transition True North's involvement in the Debtors to one of a minority participant; or (iii) dispose of the Debtors' business operations in connection with a sale.

11. Reacting to this revised business plan, the Debtors instituted certain cost-saving mechanisms that resulted in positive cash flow by the end of 2009. Subsequently, and for the reasons set forth in 21-27 below, these improved operational results once again became negative over time.

12. On March 16, 2009, the Board of Directors (the "Board") for Areté Holdings, LLC ("Holdings") held a meeting to discuss the prospect of selling the Debtors' businesses and/or soliciting

[2] True North continues to be the ultimate parent of each of the Debtors, and is the owner of not less than 99% of all equity interests in Areté Holdings, LLC, which in turn is the owner of not less than 99% of all equity interests in Areté Sleep NW, LLC, Areté Sleep, LLC, and Areté Sleep Therapy, LLC. Areté Sleep Therapy NW, LLC is a wholly-owned subsidiary of Areté Sleep NW, LLC.

new equity investors. At that time, the Board established December 31, 2009 as the projected deadline for any prospective sale.

13. In furtherance of these goals, in September 2009, Holdings retained the services of two consultants to explore the partnering, sale and investment opportunities for the Debtors: (i) Paul Wallace of Step Function Partners ("Wallace") was tasked with exploring the prospect of locating a financial partner for the Debtors, and (ii) Lawrence Bain of ITH Partners, LLC ("Bain") was tasked with locating strategic partners for the Debtors that would acquire all, or substantially all, of the Debtors' assets.

14. By December 2009, both Wallace and Bain had invested ample time and resources into exploring both sale and restructuring opportunities for the Debtors, but both had been unsuccessful in obtaining a single additional investment dollar or concrete sale offer.

15. In late December 2009, Bain advised the Debtors he no longer believed that the partnering or sale of the Debtors' business operations was a viable prospect and terminated his relationship with the Debtors. Similarly, by January 2010, Wallace had ceased providing his services to the Debtors.

16. In February 2010, the Debtors received an unsolicited communication from Clinical Research Advantage ("CRA"), the parent company of Sleep Science, Inc. ("Sleep Science"), pursuant to which CRA expressed its interest in purchasing substantially all of the Debtors' assets.

17. In March 2010, the Debtors and CRA executed a non-disclosure agreement to facilitate the exchange of information in furtherance of a potential sale, and, in May 2010, the Debtors received a received a Letter of Intent from CRA, pursuant to which CRA offered to purchase substantially all of Arete's assets (the "First Letter of Intent").

18. In July 2010, CRA amended the First Letter of Intent in order to limit its purchase offer to the Debtors' assets within the State of Arizona, and to exclude all assets located within Oregon, Texas and Washington (the "Non-Arizona Assets").

19. In August 2010, the Debtors attempted to locate a potential purchaser for the Non-Arizona Assets, and contacted a number of companies that operate within the sleep disorder diagnosis industry to solicit interest, including the following: (i) SleepMed, Inc., the nation's largest provider of

diagnostic services for sleep disorders and epilepsy; (ii) Sleep Health Centers, an operator of sleep testing laboratories in Arizona, Connecticut, Massachusetts and Rhode Island; (iii) Graymark Healthcare, Inc., a publically-traded corporation that operates sleep diagnostic centers in Florida, Iowa, Kansas, Missouri, Minnesota, Nebraska, New York, Oklahoma, South Dakota and Texas; (iv) Total Sleep Diagnostics, a sleep diagnostic organization with testing facilities in Arizona, Georgia, Indiana, Kansas, Louisiana, Massachusetts, Missouri, and Texas; (v) SleepWorks, Inc., an operator of forty-five sleep center locations throughout eleven states located primarily in the eastern half of the United States; and (vi) Dormir, Inc., a sleep disorder health care provider that operates, together with certain of its affiliates, diagnostic and testing facilities across the nation.

20. Although some limited interest in the Non-Arizona Assets was expressed by entities other than CRA and Sleep Science, none of those prospects resulted in an asset purchase agreement, and all letters of intent related to the Non-Arizona Assets have expired and/or been terminated. However, in December 2010, CRA and Sleep Science increased the purchase price under discussion to also include consideration for the Non-Arizona Assets.

21. As a result, following nearly eighteen months of concerted efforts at marketing the Debtors for sale and/or soliciting interest from additional equity investors, the Debtors believe that Sleep Science – the party designated by CRA to acquire the assets of the Debtors – is the sole entity that has expressed a sincere interest in entering into an asset purchase agreement to purchase substantially all the Debtors’ assets.

22. This may be attributable, at least in part, to the current market conditions facing sleep diagnostic centers. With the recent economic downturn, many employers have been forced to modify the medical benefits they provide to their employees, and those medical benefit plans have been scaled down and/or adapted to require a larger contribution from employees for the services provided. At the same time, rising unemployment rates have both increased the number of uninsured patients and caused both insured and uninsured patients to limit their health care services to strict “necessities” that may not include diagnosis or treatment of sleep disorders.

23. In addition, federal and state governments, as well as private insurance companies, have reduced the reimbursement rates for certain medical services, including those attributable to the

diagnosis and treatment of sleep disorders, and Debtors and other similarly situated companies have been forced to accept less compensation for the services they render.

24. Despite this reduction in reimbursement rates, the increased awareness of sleep disorders and their impact on general health has caused an increase in the desire of patients to diagnose and treat their sleep disorders. As such, the number of providers offering sleep disorder testing and treatment has increased in recent years, as have alternative diagnosis options that permit patients to submit to testing at home or in another non-clinic based setting. At the same time, the sleep disorder diagnostic industry has become more regulated, thereby increasing the cost of doing business.

25. The net result of such changes is that the average profits per clinic location has decreased in recent years, thereby making it more difficult to operate a successful sleep disorder diagnostic center that is cash positive.

26. In addition to these general market conditions, in January 2010, the Debtors received communications from CMS regarding a review of the Debtors' Medicare and Medicaid reimbursement accounts.

27. The review of the Debtors' books and records by CMS continued for nine months after the initial inquiry. This review caused significant disruption to the Debtors' normal business operations and resources were directed away from ordinary business operations to assist with the administration of, and compliance with, the review. During the nine-month period, the Debtors incurred an estimated $500,000 in expense directly attributable to the CMS review. Furthermore, modifications to the Debtors business practices prompted by the findings of the CMS review have created an additional $500,000 in annual operating expenses.

28. The general market conditions of the sleep disorder diagnostic and treatment industry, together with the particular challenges faced by the Debtors, have caused the Debtors to operate their business with a negative cash flow throughout 2010, thereby prompting significant liquidity problems and necessitating the extensive marketing efforts related to the sale of substantially all the Debtors' assets and culminating in the filing of these Chapter 11 Cases.

29. Anticipating an unsustainable negative cash flow, these Chapter 11 Cases were commenced, *inter alia*, because the only available source of funds to sustain operations and maximize

the value of the Debtors' assets was debtor-in-possession financing while the Debtors' finalize the sale process. The proposed debtor-in-possession financing should provide the Debtors with sufficient funds to operate their business while seeking to sell their assets on a going concern basis.

II. FIRST DAY MOTIONS

30. In furtherance of these objectives, the Debtors expect to file a number of First Day Motions and proposed orders and respectfully request that the Court consider entering the proposed orders granting such First Day Motions. I have reviewed each of the First Day Motions and related Orders (including the exhibits thereto) and the facts set forth therein are true and correct to the best of my knowledge, information and belief. Moreover, I believe the relief sought in each of the First Day Motions and Orders: (a) is vital to enable the Debtors to make the transition to, and operate in, Chapter 11 with a minimum interruption or disruption to their business operations or loss of productivity or value, and (b) constitutes a critical element in achieving the Debtors' successful reorganization.

A. Joint Administration of the Chapter 11 Cases

31. Holdings is the direct or indirect holder of not less than a 99 % ownership interest in each of the Debtors. I anticipate that the notices, applications, motions and other pleadings, hearings and orders in these cases will affect each of the Debtors. Thus, I believe that the joint administration of these cases will avoid the unnecessary time and expense of duplicative motions, applications, orders and other pleadings, thereby saving considerable time and expense for the Debtors and resulting in substantial savings for their estates. I also believe that such duplication of substantially identical documents would be extremely wasteful and would unnecessarily overburden the Clerk of the Court with voluminous filings. Finally, I believe that the use of a simplified caption for the jointly administered cases will enable parties-in-interest in each of the above-captioned cases to be apprised of the various matters before the Court.

B. Business Operations of the Debtors

1. Bank Accounts and Cash Management Systems

32. Prior to the filing of the Chapter 11 Cases, in the ordinary course of business, the Debtors maintained five bank accounts in the Debtors' comprehensive cash management system, with

one account being maintained for each of the Debtors. The Debtors used this cash management system to collect, transfer and disburse funds generated by their operations, and to accurately record all such transactions as they were made.

33. With the exception of the account maintained by Holdings, all of the accounts are set up as "zero balance accounts" meaning that, at the end of each day, the sum of all deposits made into those accounts on that day are automatically swept in the Holdings account. Holdings, in turn, is the sole Debtor that lists a cash balance on its financial statements, and Holdings covers all cash disbursements on behalf of all the Debtors.

34. As indicated herein, the vast majority of the Debtors' revenues relate to reimbursements for medical and diagnostic services from federal and state governmental agencies and private insurance companies. As such, approximately 70% of the Debtors' incoming receivables are transmitted by wire to the Debtors' bank accounts using pre-established routing numbers and billing systems. Because any systematic wire transfer system must be tested before the electronic processing of a wire transfer can be consistently relied upon, these wire transfer mechanisms can sometimes take as many as two weeks to modify or adjust.

35. In addition, the Debtors' existing bank accounts are compatible with direct credit card and over-the-phone payment processing capabilities subject to routing instructions and information that has been widely disseminated to the Debtors' patients and reimbursement providers. In this way, requiring the Debtors to make a wholesale change to their existing bank accounts and cash management system could disrupt the receipt and processing of payments from dozens of payors and could be extremely difficult to remedy. Furthermore, even if current reimbursements and receivables were not at risk, it could take as many as two weeks before the Debtors would be able to transition into an cash management system utilizing newly created bank accounts, thereby jeopardizing the Debtors' post-petition access to funds and revenue and creating a significant challenge to the Debtors' post-petition business operations.

36. The existing cash management system was developed to provide control over the Debtors' complex medical billing and reimbursement system. As such, the cash management and bank account systems already in place allow for: (a) overall corporate control of funds; (b) cash availability

when and where needed by the Debtors; (c) the reduction of administrative costs through a comprehensive method of coordinating funds collected; and (d) the accurate receipt and tracking of reimbursements from federal and state governmental agencies and private insurance providers. In this way, I believe that the Debtors' smooth transition into chapter 11 will be greatly enhanced by their ability to maintain these bank accounts and operate their cash management system without interruption.

37. The Debtors have used this cash management system since their inception. It includes the necessary accounting controls to enable the Debtors to trace funds through the system and ensure that all transactions are adequately documented and readily ascertainable. The Debtors will continue to maintain detailed records reflecting all receipts and transfers of funds.

38. I believe that the operation of the Debtors' businesses require continuation of the existing bank accounts and cash management system during the Chapter 11 Cases. Adopting a new cash management system and opening new bank accounts would be expensive, would create unnecessary administrative burdens, and would be disruptive to the Debtors' business operations. In addition, adopting a new cash management system and opening new bank accounts could create confusion with the Debtors' reimbursement providers, thereby jeopardizing the receipt and accurate processing of revenues. Consequently, the maintenance of the existing cash system and bank accounts is in the best interests of all creditors and other interested parties.

2. Ongoing Use of Business Forms

39. I also believe that, in order to minimize the expenses to the estates, it is in the best interests of the Debtors and their creditors to continue to use all correspondence, business forms (including, but not limited to, letterheads, patient forms, and invoices) and checks existing immediately before the Petition Date without reference to the Debtors' status as debtors-in-possession.

40. Parties doing business with the Debtors undoubtedly will be aware of their status as debtors-in-possession as a result of the notice of these cases provided to virtually all of the Debtors' creditors. A requirement that the Debtors change their business forms would be expensive and burdensome to the Debtors' estates and extremely disruptive to the Debtors' operations. Especially in

light of the Debtors' stated intention to sell substantially all their assets as a going concern in the short term, requiring the Debtors to change their business forms would have limited to no positive impact, and could serve as a deterrent for the creation of new and existing business relationships among patients, referring physicians, health care providers, and the governmental and private entities that provide reimbursements to the Debtors for services provided.

3. Intercompany Transfers

41. Prior to the Petition Date, the Debtors provided a number of services to, and engaged in intercompany financial transactions with each other in the ordinary course of their respective businesses. For example, as detailed more fully in paragraph 32, *supra*, Holdings has been almost exclusively responsible for managing the accounts payable system for each of the Debtors and making the payments due thereunder from the bank account maintained by Holdings. Similarly, Holdings manages employee benefits and cash flow for each of the Debtors, and the costs of these services are allocated across the Debtor entities.

42. The Debtors anticipate that the intercompany provision of services and centralization of accounting procedures in the ordinary course will continue following the Petition Date. Accordingly, the Debtors seek authority to continue any intercompany transactions in the ordinary course post-petition.

43. I believe that these intercompany transactions reduce the Debtors' administrative costs. By contrast, if the intercompany transactions were to be discontinued, a number of services and records systems currently provided and maintained on an intercompany basis at a reasonable or nominal costs, would be disrupted and the Debtors would be required to seek alternative, and more costly, providers and/or solutions to replace those services and records systems. Accordingly, the Debtors submit that the continuation of the intercompany transactions is in the best interests of the Debtors' estates and creditors.

44. While the Debtors have not sought the substantive consolidation of the Chapter 11 Cases as part of their First Day Motions, they recognize that their ordinary business practices, including, but not limited to: (i) the daily consolidation of all cash reserves into the bank account

owned and managed by Holdings; and (ii) Holdings' payment of virtually all accounts payable on behalf of the Debtors, support the substantive consolidation of the Debtors' estates. As such, the Debtors believe it is both reasonable and appropriate to seek the substantive consolidation of the Debtors' estates either by motion or, at a minimum, through the terms of the Debtors' plan of reorganization. Consequently, the Debtors' believe that the continuation of intercompany transactions will have no adverse impact on the Debtors' estates or their creditors and, for the reasons stated above, will actually benefit the estates and parties-in-interest by reducing the Debtors' administrative costs and expenses.

C. Utilities

45. In connection with the operation of their business and management of their properties, the Debtors obtain services (the "Utility Services") from various providers of Utility Services (each a "Utility Company" and, collectively, the "Utility Companies"). The Utility Companies known and identified by the Debtors are listed on Exhibit A to the utilities First Day Motion (the "Utilities Motion").

46. Prior to the Petition Date, the Debtors spent an average of $4,251.44 per month on utility costs. Although the Debtors generally timely pay their utility bills, due to the timing of the filings in relationship to the billing cycles of the Utility Companies, some utility costs may have been invoiced to the Debtors for which payment is not yet due, and there may also be some outstanding invoices that have not been paid. In addition, the Debtors have incurred utility costs for services provided since the end of the last billing cycle that have not yet been invoices to the Debtors.

47. The services provided by the Utility Companies are critical to the continued operations of the Debtors. If the Utility Companies refuse or discontinue service, even for a brief period, the Debtors' could be forced to cease operations at one or more of their clinic locations and both revenues and patient confidence could be severely impaired.

48. Based on discussions with counsel, I understand that a Utility Company may not discontinue service to a debtor following the 20-day period after the Petition Date solely on the basis of the entry of an order for relief or failure of the Debtor to pay a pre-petition debt. It is also my

understanding that Utility Companies arguably may discontinue service to a debtor if the debtor does not provide adequate assurance of its ability to satisfy its post-petition obligations.

49. I am also advised by counsel that Utility Companies have a right, under Section 366 of the Bankruptcy Code, to request adequate assurance of payment. However, the Debtors intend to pay all post-petition obligations owed to the Utility Companies in a timely manner. The Debtors expect that availability under their proposed debtor-in-possession financing facility will be sufficient to pay such post-petition utility obligations. Nevertheless, to provide additional assurance of payment for future services to the Utility Companies, the Debtors will deposit $4,251.44, an amount equal to the approximate estimated cost of one month of their utility bills, into a newly created, segregated, interest-bearing account, within twenty (20) business days after the Petition Date (the "Adequate Assurance Deposit"). The Adequate Assurance Deposit shall be maintained with a minimum balance equal to the Debtors' estimated monthly cost of Utility Services, which may be adjusted by the Debtors to account for the termination of Utility Services by the Debtors or other arrangements with respect to adequate assurance of payment reached with a Utility Company.

50. To the extent that the Debtors become delinquent with respect to a Utility Company's account, such Utility Company shall file a notice of such delinquency (the "Delinquency Notice") with the Court and serve such notice on: (i) the Debtors; (ii) counsel to the Debtors; (iii) counsel to the official committee of unsecured creditors, if one is appointed, and (iv) counsel to the United States Trustee (collectively, the "Parties-In-Interest"). If the Debtors have not cured such delinquency or no Party-In-Interest has objected to the Delinquency Notice within ten (10) days of the receipt of the Delinquency Notice, then the Debtors shall remit to such Utility Company from the Adequate Assurance Deposit the lesser of: (i) the amount allocated in the Adequate Assurance Deposit for such Utility Company's account, or (ii) the amount of the post-petition charged claimed as delinquent in the Delinquency Notice.

51. I believe that the Adequate Assurance Deposit, coupled with the Debtors' ability to pay for future utility services in the ordinary course of its business operations through either their post-petition revenues or the funds available to them through their debtor-in-possession financing facility,

provides protection will in excess of that required to grant sufficient adequate assurance to the Utility Companies.

D. Cash Collateral and Debtor-In-Possession Financing

52. In order to fund their ongoing business operations, and to preserve their going concern value, the Debtors have a critical need for the post-petition use of cash collateral and debtor-in-possession financing. The Debtors do not have sufficient available sources of working capital and financing to operate their business without the provision of debtor-in-possession financing and the use of cash collateral. Indeed, the Debtors have an immediate need to use cash collateral to, among other things, obtain additional inventory and medical diagnostic supplies from their vendors, make payroll disbursements, and fund other routine operating costs. In addition, I believe that access to the cash collateral and debtor-in-possession financing will provide the Debtors' creditors and vendors with the requisite security that the Debtors will be able to continue conducting their business in the ordinary course without interruption. I believe that in the absence of immediate authorization for the use of cash collateral and entry into a debtor-in-possession financing facility, the Debtors could not continue to operate their businesses, and immediate and irreparable harm to the Debtors and their estates would occur.

53. True North has agreed to provide debtor-in-possession financing to the Debtors in accordance with the terms of that certain Secured Promissory Note (the "Note") and the Security Agreement (the "Security Agreement" and, together with the Note, the "DIP Facility"), copies of which are attached to the Debtors' motion for authority to enter into the DIP Facility (the "DIP Motion") as Exhibits A and B, respectively. The DIP Facility does not require, nor does the DIP Motion seek, to prime any existing security interest.

54. While the DIP Facility constitutes the sole proposal solicited by the Debtors for the provision of post-petition financing, the Debtors believe that the terms and conditions enumerated in the DIP Facility are both reasonable and fair under the circumstances. The DIP Facility provides for a maximum of $625,000 in advances at the non-default fixed interest rate of 8.6%, plus a funding fee

equal to 1.0% of all disbursements made thereunder (the "Funding Fee"), which Funding Fee will be deemed additional principal under the Note and payable in accordance with the terms thereof.

55. The Debtors are not required to make monthly or interim payments under the DIP Facility until its maturity (although the Debtors are entitled to make such payments in their sole discretion), and the administrative burden to the Debtors' estates related to the DIP Facility have been minimized by the softening of many of the reporting requirements and warranties typically granted by a borrower in similar circumstances. Consequently, it is my opinion that the Debtors' most favorable – if not sole – option for debtor-in-possession financing is the DIP Facility. Indeed, the Debtors believe that, given current market circumstances, they will be unable to obtain unsecured post-petition financing allowable as an administrative expense under Section 503(b)(1) of the Bankruptcy Code, unsecured credit allowable under Sections 364(a) and 364(b) of the Bankruptcy Code, or secured credit pursuant to section 364(c) of the Bankruptcy Code on terms and conditions more favorable to the Debtors' estates than those offered in the DIP Facility. I do not believe that any lender would have been willing to loan new money to the Debtors on terms more favorable than those contained in the DIP Facility.

56. After reviewing the proposal submitted by True North, the Debtors determined, in the exercise of their business judgment, that the financing offered by True North was in the best interests of these estates. I believe that the terms of the DIP Facility are the best available to the Debtors in the current credit market, and that the Debtors' agreement to those terms reflects the Debtors' exercise of prudent business judgment consistent with their fiduciary duties.

57. In addition, the Debtors have sought permission to use certain cash collateral of TCF Equipment Finance, Inc. d/b/a VGM Financial Services ("VGM") in which VGM has been granted a security interest pursuant to the terms of that certain Master Lease Agreement dated on or about December 10, 2008 and all schedules related thereto (the "VGM Loan"). As of the Petition Date, the value of the claim due and owing to VGM under the terms of the VGM Loan was approximately $667,000. In order to secure these obligations, Arete Sleep Therapy, LLC granted VGM a security interest in, among other things, all of Arete Sleep Therapy, LLC's accounts, chattel paper, documents, general intangibles, instruments and inventory, and all proceeds of the forgoing (collectively, the

"VGM Collateral"). Consequently, the existing cash reserves of Arete Sleep Therapy, LLC may constitute cash collateral of VGM pursuant to the terms of the VGM Loan.

58. As and for adequate protection of VGM's interests in the VGM Collateral, the Debtors propose to: provide VGM with post-petition replacement liens over the assets of Arete Sleep Therapy, LLC, to the same extent, and with the same validity and priority, as VGM's liens on the VGM Collateral (the "VGM Adequate Protection").

59. I believe that the proposed VGM Adequate Protection will be sufficient to adequately protect VGM's interests in the VGM Collateral resulting from: (i) the imposition of the automatic stay; and/or (ii) the use of the VGM Collateral, including any cash collateral. The adequate protection terms set forth in the proposed order submitted with the motion for approval of the Debtors' use of cash collateral (the "Cash Collateral Motion") have been proposed in good faith by the Debtors, and I believe that they are fair and reasonable under the circumstances, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties, and are supported by reasonably equivalent value and fair consideration.

60. The Debtors require immediate use of the cash collateral and the DIP Facility to pay present operating expenses, including payroll, and to pay vendors and other professionals to ensure a continued supply of goods essential to the Debtors' continued viability. Thus, the use of cash collateral and the authority to enter into the DIP Facility are necessary to avoid immediate and irreparable damage to the Debtors' estates and I submit the interim relief pursuant to Bankruptcy Rule 4001 is appropriate.

III. CONCLUSION

61. To minimize any loss of value of their businesses during these Chapter 11 Cases, the Debtors' immediate objective is to maintain a business-as-usual atmosphere with as little interruption or disruption to the Debtors' operations as possible. I believe that if the Court grants the relief requested in each of the First Day Motions, the prospect of achieving those objectives will be substantially enhanced.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 26th day of January, 2011.

/s/ Daniel Dempsey

Daniel Dempsey

Chief Restructuring Officer for Areté Holdings, LLC, Areté NW, LLC, Areté Sleep, LLC, Areté Sleep Therapy, LLC, and Areté Sleep Therapy NW, LLC (collectively, the “Debtors”), Debtors and Debtors-In-Possession in the above-captioned matter,